the lapse of time, the terms (including remuneration) of the appellant's service would have now to be taken to be, if the declaration were made; but the practical effect would be to give to the appellant a monetary claim far in excess of the damages awarded by the Court of Appeal and far in excess of any measure of damages to which the appellant appears to the Board to be entitled as flowing from a wrongful dismissal.

In his judgment in the Court of Appeal in *Vine's* case Jenkins L.J. (at p. 674) said:

"But in the ordinary case of master and servant the repudiation or the wrongful dismissal puts an end to the contract, and the contract having been wrongfully put an end to a claim for damages arises. It is necessarily a claim for damages and nothing more. The nature of the bargain is such that it can be nothing more."

In his speech in that case in the House of Lords Lord Kilmuir L.C. at page 500 said:—

"It follows from the fact that the plaintiff's dismissal was invalid that his name was never validly removed from the register and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case; there, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him. It is therefore right that, with the background of this scheme, the court should declare his rights."

In their Lordships' view the circumstances of the present case are not comparable with those in *Vine's* case and are not such as to make it appropriate to give a declaratory judgment in the manner contended for on behalf of the appellant. The appellant's employment must be treated as having in fact come to an end on the 1st October, 1957 and the appellant's remedy lay in a claim for damages. Their Lordships express no view as to the amount of the damages awarded beyond saying that no ground for their increase has been shown.

Their Lordships will report to the Head of the Federation that in their opinion the appeal should be dismissed and the appellant should pay the costs of the appeal before their Lordships' Board.

Appeal dismissed.

Solicitors: *Graham Page & Co.; C. Grobel Son & Co.*

CHENG EE MUN v. LOOK CHUN HENG & ANOR.

[C. A. (Rose C.J., Buttrose and Wee Chong Jin JJ.) October 3, 1962]

[Singapore — Civil Appeal No. 11 of 1962]

Chinese Law and Custom — Married woman ceasing to live with husband — Marriage not dissolved — Second wedding ceremony undergone by married woman — Whether valid — Legitimacy of issue of purported second marriage — "Issue" — Meaning of.

The appellant's mother, L.M.W., married one B in or about 1917 at a marriage ceremony according to Chinese custom. Within 2 months after the marriage she left her husband and went back to live with her father, L.K.Y., the testator, but she continued to visit B from time to time until 1943 or 1944. There never was any divorce or agreement to a separation. At some time before 1933, she went through a form of wedding ceremony with one C.Y.C., and as a result of this union the appellant was born. The appellant now claimed a share under the testator's will on the ground that he was the lawful son of L.M.W., or alternatively that he fell within the meaning of the expression "issue" in clause 13 of the will.

Held: (1) since the marriage between the appellant's mother and B had not been dissolved at the time when the purported second marriage took place with C.Y.C. the second marriage ceremony did not result in a valid marriage between them and therefore the plaintiff was not a lawful issue of his mother;

(2) there was no evidence that the testator intended the expression "issue" in clause 13 of his will to mean any issue other than a legitimate child.

COURT OF APPEAL.

L. A. J. Smith for the appellant.

M. Karthigesu for the respondents.

Cur. Adv. Vult.

Wee Chong Jin J. (with whom **Rose C.J.** and **Buttrose J.** agreed): This appeal arises out of a claim by the appellant to a share in the estate of Look Yan Kit deceased (hereinafter referred to as "the testator") under the provisions of the will of the testator. The claim is based on two grounds, namely, that he was the lawful son of one Look Moon Wai, a daughter of the testator or alternatively that he fell within the meaning of the expression "issue" in clause 13 of the Will of the testator so that in the events that have happened he was entitled to take the share of his deceased mother notwithstanding the fact that he was not a legitimate son of Look Moon Wai.

The facts as found by the learned trial Judge were as follows: The plaintiff's mother married one Boey Peng Khwai in or about 1917 at a marriage ceremony held in accordance with

Chinese custom with the status of a principal wife or "t'sai". Within two months after the marriage she ceased to live permanently with her husband and went back to live with her father but continued to visit him from time to time until 1943 or 1944. There was never any separation or divorce between Look Moon Wai and her husband nor was there any agreement to a separation or divorce. At some unspecified date, but at any rate before July 1933, Look Moon Wai went through a form of wedding ceremony with a person called Chiang Yue Chong alias Cheng Lok and as a result of this union the plaintiff was born in July 1933.

On these facts the learned trial Judge came to the conclusion that as the marriage between Look Moon Wai and Boey Peng Khwai had not been dissolved at the time when Look Moon Wai went through a form of wedding ceremony with Chiang Yue Chong that ceremony did not result in a valid marriage between them. In the result he held that the plaintiff was not a lawful issue of Look Moon Wai.

At the trial the defendants, who were the trustees of the Will of the testator, called an expert to give evidence on Chinese custom and Chinese law. This expert gave evidence that a marriage between two Chinese persons celebrated in the traditional manner between 1910 and 1920 could be dissolved only by the husband divorcing the wife and that the wife could not divorce the husband. This expert also gave evidence that before 1933 mere long continued separation did not constitute a dissolution of such a marriage. He also gave evidence that where a woman who is living apart from her husband goes through a form of marriage with another man no valid marriage is constituted because she is not a divorced woman.

As regards the alternative claim, the learned trial Judge came to the conclusion that there was nothing either in the Will or in the surrounding circumstances to show that the testator had the intention to benefit the illegitimate issue of Look Moon Wai and that therefore in accordance with the accepted authorities the description "issue" must be taken *prima facie* to mean legitimate issue.

Before us it was urged by counsel for the appellant that the learned trial Judge should have rejected the evidence of the expert that according to Chinese custom a married woman could not divorce her husband and should have held that there were no provisions in law in Singapore preventing a wife married according to Chinese custom in Singapore from unilaterally divorcing her husband. It was also urged by counsel that from the fact that the appellant's mother had ceased to live with her husband within three weeks after the marriage and had subsequently contracted a further marriage the proper inference to be drawn was that she intended and regarded her original marriage to be at an end and accordingly the plaintiff was a legitimate child.

I am unable to accept these contentions. There was abundant evidence on which the learned trial Judge could come to the conclusion that there was no dissolution of the marriage between the plaintiff's mother and Boey Peng Khwai at the date when she went through a form of marriage ceremony with the plaintiff's natural father. There was also no evidence that there was a custom prevailing in China and adopted by the Chinese in Singapore that a married woman could unilaterally divorce her husband and in fact the evidence of the expert on Chinese law and custom is to the contrary.

One fundamental principle, I think, must be borne in mind, namely, that once a valid marriage is contracted between two parties that marriage exists until there is a valid divorce or until the marriage is terminated by death.

A corollary to that fundamental principle is that neither party, while the marriage exists, is free to contract another marriage with a third person. Any such union would therefore not result in a valid marriage and children of such a union would not be legitimate children. In my opinion this ground of appeal fails.

As regards the alternative claim counsel for the appellant put forward the same argument as he did in the Court below and this argument in the words of the learned trial Judge was as follows:

> "It was contended by counsel for the plaintiff that the testator intended Look Moon Wai's children by some marriage other than that with Boey Peng Khwai to benefit under the will. The testator knew that she was living apart from Boey Peng Khwai and, so said counsel for the plaintiff, with that knowledge he made this will fully intending issue born by her to another man to take under the will."

A perusal of the Record discloses that the testator made this will on the 30th December, 1926 and discloses that there was no evidence at the trial that on that date the testator knew his daughter, Look Moon Wai had contracted a union with the plaintiff's natural father or indeed had begun to associate with any man other than Boey Peng Khwai. In my view, on the evidence the learned trial Judge could come to no other conclusion than that the expression "issue" in clause 13 must be given its *prima facie* meaning of legitimate child.

I would accordingly dismiss this appeal.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Allen & Gledhill.*